

ARTICLE IV. - POLICEMEN'S RETIREMENT/PENSION FUNDS

DIVISION 1. - GENERALLY

Secs. 13-151—13-154. - Reserved.

Sec. 13-155. - State contribution fund created—Policemen.

The policemen state contribution fund is hereby created. It shall be the fund in which shall be accumulated the monies received from the state for policemen members. In no case shall the city contribute to the said fund and in no case shall disbursements from the fund exceed the balance credited to the fund.

(Ord. No. K-469, § 1, 2-20-07)

Secs. 13-156—13-160. - Reserved.

DIVISION 2. - POLICE OFFICERS' RETIREMENT TRUST FUND

Sec. 13-161. - Definitions.

The following words and phrases as used in this division shall have the following meanings, unless a different meaning is plainly required by the context:

Actuarial equivalence or *actuarially equivalent* means that any benefit payable under the terms of this plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment, all future payments shall be discounted for interest and mortality by using seven and one-half (7.5) percent interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five (5) years in the case of disability retirees.

Average salary means the average regular monthly salary of the police officer during his best three (3) years of the last ten (10) years of credited service prior to retirement, termination, or death. Such average salary shall include amounts paid a differential wages while a member was deployed from employment to active duty military service.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Credited service means that period of continuous uninterrupted employment with the city as a policeman from the effective date of this retirement plan, or his last date of employment, if later, and the earlier of his date of termination of service or his normal retirement date, as hereinafter described. An authorized temporary leave of absence, granted by the employing authority, whether paid or unpaid, shall not be construed as a break in credited service provided the police officer's credited benefits remain in the plan. Time spent in compulsory service of the United States by the police officer will be credited, provided the police officer reenters the service of the city as a police officer within twelve (12) months after the date of release from such military service except that members who die or become disabled while serving on active duty military service shall be entitled to the rights of this section even though such member was not reemployed by the city. Members who die or become disabled while on active duty military service shall be treated as though reemployed the day before the member became disabled or died, was credited with the service they would have been entitled to under this section, and then either died a nonduty death while employed or became disabled from a nonduty disability.

Police officer means any duly appointed and enrolled policeman in the regular full-time employ of the city.

Police officers' retirement plan, herein called the plan, means a special plan created exclusively for the purposes herein provided.

Salary means the regular monthly salary paid to a police officer for services rendered. For purposes of applying the limitations of [Internal Revenue] Code section 415(b), compensation includes base pay, incentive pay, longevity pay, shift premiums, police incentive pay, overtime pay, base salary or wages while absent from work on account of vacation, holiday, illness or other authorized paid leave, payments in consideration of unused sick and vacation time, and city contributions on behalf of the employee to a deferred compensation program maintained pursuant to section 457 of the [Internal Revenue] Code. Additionally, this limitation specifically includes the crediting of compensation while absent from service for military duty; such crediting shall not exceed the compensation that would have been credited under the system if system services had continued.

Total disability means as defined in F.S. § 185.18(2), as amended.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-84, § 1, 7-20-09; Ord. No. L-118, § 1, 5-3-10)

Sec. 13-162. - Police officers retirement law and rules adopted.

The provisions thereof and all rules and regulations promulgated pursuant to F.S. ch. 185, known as "Municipal Police Officers Retirement Trust Funds" are hereby adopted by the city except as inconsistent with the provisions of city ordinances or portions thereof.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-163. - Established; purpose; effective date.

- (a) There is hereby established a retirement plan for the members of the city police department. The purpose of this plan is to establish the terms and conditions under which supplementary retirement benefits will be provided to eligible members of the police department. The benefits under this plan shall be in addition to the amounts to which eligible members are entitled under the City of Fort [Pierce] Employees' Pension Plan and in addition to amounts received as social security benefits or from any other pension plan. The effective date of this plan shall be the anniversary date of the plan. This system is intended to be a tax qualified plan under [Internal Revenue] Code section 401(a) and meet the requirements of a governmental plan as defined in [Internal Revenue] Code section 414(d).
- (b) There is hereby created a board of trustees of the retirement plan for the members of the city police department which shall be solely responsible for administering the trust fund. The membership of the board of trustees consists of five (5) members, two (2) of whom, unless otherwise prohibited by law, must be legal residents of the city and must be appointed by the legislative body of the municipality, and two (2) of whom must be police officers as defined in [F.S.] § 185.02 who are elected by a majority of the active police officers who are members of such plan. The fifth member shall be chosen by a majority of the previous four (4) members, and such person's name shall be submitted to the legislative body of the city. Upon receipt of the fifth person's name, the legislative body shall, as a ministerial duty, appoint such person to the board of trustees. The fifth member shall have the same rights as each of the other four (4) members appointed or elected, shall serve as trustee for a period of four (4) years and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of four (4) years unless sooner replaced by the legislative body at whose

pleasure the member serves and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of four (4) years unless he or she sooner leaves the employment of the municipality as a police officer, whereupon a successor shall be chosen in the same manner as an original appointment. Each police officer may succeed himself or herself in office.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-111, § 1, 2-1-10; Ord. No. L-118, § 2, 5-3-10)

Sec. 13-164. - Excise tax on casualty insurance premiums.

There is hereby assessed and levied on every insurance company, corporation or other insurer now engaged in or carrying on, or which shall hereafter engage in or carry on the business of insuring with respect to casualty risks, as shown by the records of the state department of insurance, an excise or license tax in addition to any lawful license or excise tax now levied by the city, amounting to eighty-five hundredths (0.85) per cent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of the city.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-165. - Records; accounts; disbursements; deposits; contributions; actions.

- (a) The board of trustees shall keep and maintain a full and complete permanent record of all accounts, receipts, disbursements, deposits, and all other official actions of the board. These records shall be available to all members participating in the plan.
- (b) The trustees, if they so desire, may designate any one of their members to execute all instruments requiring execution by the board of trustees and/or they may designate the chairman to execute such instruments or exercise such powers as they may determine. The members of the board of trustees shall be free from any liability for any action taken or omitted in carrying out their duties of administering the plan, except that result from their own willful misconduct.
- (c)

The board of trustees may employ a money manager to advise the board in the making and disposition of investments and may delegate discretionary authority to its money manager within the framework of a duly adopted investment policy. The board of trustees may also employ the services of a bank, insurance company, or other investment company in the execution of its investment transactions.

(d) All monies and investments of the plan shall be held for the sole purpose of meeting disbursements for annuities and other payments authorized, and shall be used for no other purpose. Available cash on deposit shall not exceed ten (10) per cent of the total assets of the plan.

(e) In addition to all other powers of the board of trustees as provided by law, the board of trustees may invest and re-invest the assets of the plan as follows:

(1) The board shall have the power and authority to invest and reinvest the moneys of the fund and to hold, purchase, sell, assign, transfer, and dispose of any securities and investments held in the fund, including the power and authority to employ counseling or investment management services. The aim of the investment policies shall be to preserve the integrity and security of fund principal, to maintain a balanced investment portfolio, to maintain and enhance the value of the fund principal, and to secure the maximum total return on investments that is consonant with safety of principal, provided that such investments and reinvestments shall be limited only by the investments permitted by the investment policy guidelines adopted by the board in accordance with Florida law. Notwithstanding the foregoing, investments in foreign investments are limited in accordance with section 185.06(1)(b)4., Florida Statutes. The board members must discharge these duties with respect to the plan solely in the interest of the participants and beneficiaries and:

- a. For the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan;
- b. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

c.

By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

- (2) Notwithstanding anything else in this subsection and as provided in F.S. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section. Beginning January 1, 2010, the board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by F.S. 215.473 as provided for in F.S. 185.06(7) and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the board may utilize the list of scrutinized companies as developed by the state board of administration. No person may bring any civil, criminal or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.
- (3) Marketable, investment grade real estate investment trusts, but not to include investments in private mortgages, land, private equity or other illiquid real estate investments.
- (4) Notwithstanding anything else in this subsection and as provided in F.S. § 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section. Beginning January 1, 2010, the board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security and the board shall have satisfactorily

discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by F.S. § 215.473 as provided for in F.S. § 185.06(7) and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the board may utilize the list of scrutinized companies as developed by the Florida State Board of Administration. No person may bring any civil, criminal or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-111, § 2, 2-1-10; Ord. No. 14-002, § 1, 2-3-14)

Sec. 13-166. - Retirement.

- (a) *Normal retirement date.* The normal retirement date for participants retiring on or after October 1, 1999, shall be age fifty-five (55) or older with ten (10) or more years service. With the consent of the board of trustees, a participant may retire within the ten-year period prior to his normal retirement date and in such an event the cash accumulated under this plan may be applied to purchase an actuarially reduced pension at such earlier retirement date. A participant may also retire with no reduction in pension benefits after obtaining twenty-five (25) or more years of credited service.
- (b) *Amount of retirement income.* Each police officer who is a participant in the plan shall be entitled to two (2) per cent of his average monthly salary for each year of service from the effective date (July 29, 1958) until his normal retirement date, subject to the following limitations:
 - (1) Credited service is limited to a maximum of thirty (30) years; and
 - (2) Retirement income under this section is limited to a maximum of the greater figure as computed by either two (2) per cent of average monthly salary with a one thousand dollar (\$1,000.00) per month maximum (based on thirty (30) years' credited service) or one per cent of average monthly salary with no maximum per month (based on thirty (30) years' maximum service).

The normal retirement income at normal retirement date provided under this plan shall be a retirement annuity guarantee payable for ten (10) years certain and for lifetime thereafter. The benefit provided under this plan shall be increased to the extent required to ensure that the benefit provided under this plan and the benefit provided under the retirement system for officers and employees of participating employers are actuarially equivalent to a retirement annuity of two (2) per cent per year of service guaranteed for ten (10) years certain and for lifetime thereafter. If a retired member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary up to twice in accordance with F.S. § 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retired member is not required to provide proof of the good health of the joint [annuitant or beneficiary] being removed and the joint annuitant or beneficiary being removed need not be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the board of trustees a notarized notice of such change. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the retired member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the plan. No retired member's current benefit shall be increased as a result of the change of beneficiary.

(c) *Disability benefits.*

- (1) *Duty disability.* The benefit provided in the event of under this plan shall be increased to the extent required to ensure that the benefit provided under this plan and the benefit provided under the retirement system for officers and employees of participating employers are actuarially equivalent to a retirement annuity of at least two (2) per cent of average monthly salary per year of service guaranteed for ten (10) years certain and life.
- (2) *Non-duty disability.* The benefit provided under this plan shall be increased to the extent required to ensure that the benefit provided under this plan and the benefit provided under the retirement system for officers and employees of participating employers are actuarially equivalent to a retirement annuity guaranteed for ten (10) years certain.
- (3) *Disability process.*
 - a.

A police officer will be considered totally disabled if, in the opinion of the board of trustees, he or she is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subparagraph b.

- b. A police officer will not be entitled to receive any disability retirement income if the disability is a result of:
 - 1. Excessive and habitual use by the police officer of drugs, intoxicants, or narcotics;
 - 2. Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
 - 3. Injury or disease sustained by the police officer while serving in any armed forces. This exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245);
 - 4. Injury or disease sustained by the police officer after employment has terminated;
 - c. No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.
- (4) *[Additional provisions.]* Any condition or impairment of health of any police officers employed in the city caused by tuberculosis, hypertension, heart disease, hardening of the arteries, hepatitis, or meningococcal meningitis resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by

competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. In order to be entitled to the presumption in the case of hepatitis, meningococcal meningitis, or tuberculosis, the member must meet the requirements of F.S. § 112.181. The final decision as to whether a member meets the requirements for duty disability pension rests with the board and shall be based on substantial competent evidence on the record as a whole.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-84, § 3, 7-20-09; Ord. No. L-111, § 3, 2-1-10)

Sec. 13-167. - Death benefits.

Upon the death of a plan member who dies with ten (10) years credited service, and vested in the plan, the beneficiary or beneficiaries shall be entitled to a lump sum payment, in cash, equal to the pension benefit the deceased member would have been entitled to receive at his normal retirement date of age fifty-five (55), actuarially reduced. A plan member's beneficiary or beneficiaries shall be designated in accordance with the provisions of F.S. § 185.162. The benefit provided under this section and in conjunction with the benefit provided under the retirement system for officers and employees of participating employers shall in all cases provide at a minimum a benefit that is the actuarial equivalent of the benefit required under F.S. § 185.21.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-168. - Employee withdrawal from the plan.

- (a) Employees who terminate employment prior to ten (10) years' continuous service in the police department shall not be eligible for benefits.

- (b)

Employees who terminate with ten (10) or more years continuous service with the police department shall be entitled to a benefit equal to the purchase of an annuity equal to the value of the lump sum payment at age fifty (50) as computed in section 13-166(c) actuarially reduced by three (3) per cent for each year that the member retires early. The member can elect to wait to receive the benefit until age fifty-five (55) without an actuarial reduction. Employees hired after December 17, 1984, shall not be eligible to receive lump sum benefits and may only accept the purchase of an annuity as provided herein. The benefit provided under this section and in conjunction with the benefit provided under the retirement system for officers and employees of participating employers shall in all cases provide at a minimum a benefit that is the actuarial equivalent of the benefit required under F.S. §§ 185.16(4) and 185.19.

- (c) Employees who become totally and permanently disabled after ten (10) or more years of continuous service shall be entitled to one hundred (100) per cent of the lump sum amount accumulated on their behalf as of date of disability as computed in section 13-166(c). The lump sum shall be equal in value to the amount of monthly benefits to which the member is entitled.
- (d) Notwithstanding any of the provisions hereof, if the early monthly retirement income payable to any person entitled to benefits hereunder is less than seventy-five dollars (\$75.00) per month, the trustees in the exercise of their discretion may specify that the actuarial equivalent of such retirement income be paid in a lump sum.
- (e) Notwithstanding any of the provisions hereof, if the monthly retirement annuity from the municipal retirement system is equal to fifty (50) per cent of the average monthly salary of the retiring police officer, or if the combined monthly annuity from the municipal retirement system, federal social security retirement and the Fort Pierce Police Retirement Fund is equal to fifty (50) per cent of the retiring police officer's average monthly salary, the trustees may, in the exercise of their discretion, specify that the actuarial equivalent of the monthly benefit in excess of fifty (50) per cent of such average monthly salary be paid in a lump sum.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08)

Sec. 13-169. - Members deposit fund.

- (a)

The police members deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contribution of members, and from which shall be made refunds and transfers of accumulated contributions as provided in this article.

- (b) A member's contribution to the retirement system, specifically to the municipal police officers retirement system as set up in accordance with F.S. Ch. 185, shall be as follows: After the effective date of this section [Ordinance Number I-272], three and one-half (3.5) per cent of the compensation of each member of this municipal police officers retirement trust fund set up in accordance with F.S. Ch. 185, shall be paid by each member to said system. Effective for the first full payroll period after May 2, 2011, the member's contribution shall be four and one-half (4.5) per cent of the salary or compensation of each member of this municipal police officers retirement trust fund which shall be paid by each member to said system. Effective for the first full payroll period after October 1, 2011, the member's contribution shall be seven (7) per cent of the salary or compensation of each member of this municipal police officers retirement trust fund which shall be paid by each member to said system.
- (c) The officer or officers responsible for making up the payroll shall cause the contributions provided for in subsection (b) to be deducted from the compensation of each member on each payroll, for each payroll period, so long as he is a member of his retirement system. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by him during the period covered by such payment, except as to benefits provided by the retirement system. When deducted, each of said contributions shall be paid into the members deposit fund and shall be credited to the individual account therein of the member from whose compensation said deduction was made. Effective the first day of the first full payroll period following the effective date of this section, the city shall pick up the member contribution required by this section. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The city shall pick up the member contributions from funds established and available for salaries, which funds would otherwise have been designated as member contributions and paid to the fund. Member contributions picked up by the city

pursuant to this subsection shall be treated for purposes of making a refund of members' contributions, and for all other purposes of this and other contributions made prior to the effective date of this section. The intent of this section is to comply with section 414(H)(2) of the Internal Revenue Code.

- (d) Should any police officer leave the service of the municipality before accumulating aggregate time of ten (10) years toward retirement and before being eligible to retire under the provisions of this chapter, such police officer shall be entitled to a refund of all his contributions made to the municipal police officers retirement trust fund without interest, less any benefits paid to him.
- (e) Should any police officer who has been in the service of the municipality for at least ten (10) years and has contributed to the municipal police officers retirement trust fund for at least ten (10) years elect to leave his accrued contributions in the municipal police officers retirement trust fund, such police officer, upon attaining the age of retirement authorized under this Code, may retire at the amount of such retirement income otherwise payable to him.
- (f) Should any police officer die before being eligible to retire under the provisions of this chapter, the heirs, legatees, beneficiaries or personal representative of said deceased police officer shall be entitled to a refund of one hundred (100) per cent, without interest, of the contributions made to the municipal police officers retirements trust fund by such deceased police officer.

(Ord. No. K-469, § 1, 2-20-07; Ord. No. L-34, § 1, 8-18-08; Ord. No. L-212, § 1, 5-2-11; Ord. No. L-229, § 1, 12-5-11)

Sec. 13-170. - Forfeiture of pension; conviction and forfeiture.

Any participant who is convicted of any of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this plan, except for the return of his accumulated contributions as of the date of termination:

- (1) Specified offenses are as follows:
 - a. The committing, aiding or abetting of an embezzlement of public funds;
 - b. The committing, aiding or abetting of any theft by a public officer or employee from the employer;
 - c. Bribery in connection with the employment of a public officer or

employee;

- d. Any felony specified in F.S. ch. 838;
 - e. The committing of an impeachable offense.
 - f. The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position.
 - g. The committing on or after October 1, 2008, of any felony defined in [F.S.] § 800.04 against a victim younger than sixteen (16) years of age, or any felony defined in [F.S.] chapter 794 against a victim younger than eighteen (18) years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.
- (2) Conviction shall be defined as follows: An adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the senate of an impeachable offense.
- (3) Court shall be defined as follows: Any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing on which notice shall be given to the police officer whose benefits are being considered for forfeiture. Said police officer shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the police officer shall be afforded a full opportunity to present his case against forfeiture.
- (4) Any police officer who has received benefits from the plan in excess of his accumulated contributions after police officer's rights were forfeited pursuant to this section shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

- (5) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit from the plan.
- a. A person who violates subsection (5) of this section, commits a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 or 775.083.
 - b. In addition to any applicable criminal penalty upon conviction for a violation described in subsection (5) of this section, a police officer or beneficiary of the plan may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the plan. For purposes of subsection (7) of this section, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-84, § 3, 7-20-09)

Sec. 13-171. - Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this plan if the same is found to be erroneous, fraudulent or illegal for any reason, and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this plan be erroneously, improperly or illegally classified. Any overpayments or under payments shall be corrected and paid or repaid in a reasonable manner determined by the board.

(Ord. No. L-34, § 1, 8-18-08)

Sec. 13-172. - Claims procedure.

(a)

The applicant for benefits under this plan may, within twenty (20) days after being informed of the denial of his or her request for pension benefits, appeal the denial by filing a reply to the proposed denial with the pension plan board of trustees. If no appeal is filed within the time period specified, then the denial is final.

- (b) The board shall hold a hearing within forty-five (45) days after receipt of the appeal. Written notice of the hearing shall be sent by certified mail to the applicant ten (10) days prior to the hearing, at the address listed on the application.
- (c) The board shall have the power to subpoena, require the attendance of witnesses, and the production of documents for discovery, prior to and at any proceedings provided for in the plan. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas, not to exceed the fees set forth in the Florida Statutes.
- (d) The procedures at the hearing shall be as follows:
 - (1) All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument, on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. Medical depositions may be accepted in lieu of live testimony, at the board's discretion.
 - (2) All witnesses shall be sworn.
 - (3) The applicant and the board shall have an opportunity to question all witnesses.
 - (4) The formal rules of evidence and the formal rules of civil procedures shall not apply. The proceedings shall comply with the essential requirements of due process of law.
 - (5) The record in a case governed by this subsection shall consist only of:
 - a. A tape recording of the hearing, to be taped and maintained as part of the official files of the board of trustees by the pension's secretary.
 - b. Evidence received or considered.
 - c. All notices, pleadings, motions and intermediate rulings.
 - d. Any decisions, opinions, proposed or recommended orders or reports by the board of trustees.
- (e) Within ten (10) days after the hearing, the board shall take one of the following actions:

- (1) Grant the pension benefits by overturning the denial by majority vote;
- (2) Deny the benefits and confirm the denial.

The board's decision shall be in writing set forth as an order.

- (f) Findings of fact by the board shall be based on competent, substantial evidence on the record.
- (g) Upon rendering its order, the board shall send by certified mail a copy of the order to the applicant.
- (h) The applicant may seek review of the order of the board by filing a petition for writ of certiorari with the circuit court within thirty (30) days of the order being rendered.

(Ord. No. L-34, § 1, 8-18-08)

Sec. 13-173. - Required distributions.

- (a) In accordance with IRC Section 401(a)(9), all benefits under this plan will be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a beneficiary designated in accordance with the provisions of F.S. § 185.162.
- (b) Any and all benefit payments shall begin by April 1 of the calendar year following the calendar year of the member's retirement date; provided however, all participants who will reach seventy (70) before December 31, 1999 may, at participant option, elect to begin benefits on April 1 of the calendar year following the calendar year in which the member attains age seventy and one-half (70.5).
- (c) If an employee or elected officer dies before his entire vested interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as provided for under section 13-166.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-118, § 3, 5-3-10)

Sec. 13-174. - Rollover distributions.

- (a) [*Applicability.*] This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may

elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

- (1) *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more and any distribution to the extent such distribution is required under section 401(a)(9) of the [Internal Revenue] Code. This definition is effective January 1, 2003.
- (2) *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) of the [Internal Revenue] Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust, an annuity plan described in section 403(a) of the [Internal Revenue] Code, an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A) of the [Internal Revenue] Code or an annuity contract described in 403(b) of the [Internal Revenue] Code, that accepts in the distributee's eligible rollover distribution.
- (3) *Distributee.* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is entitled to payment for alimony and child support under an income deduction order, are distributees with regard to the interest of the spouse or former spouse.
- (4) *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-118, § 4, 5-3-10)

Sec. 13-175. - Internal Revenue Code limits.

(a)

[Limits on compensation.] Compensation in excess of limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993.

(b) *415 Internal Revenue Code limits.*

- (1) *Basic limitations.* Subject to the adjustments in paragraph (3), the maximum amount of the actual annual retirement income paid in any year with respect to a participant under this plan attributable to employer provided benefits shall not exceed the dollar amount allowable for any calendar year pursuant to section 415(b) of the [Internal Revenue] Code, as adjusted in such calendar year for increases in the cost of living in accordance with regulations issued by the Secretary of the Treasury under section 415(d) of the [Internal Revenue] Code. For purposes of applying the basic limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this subsection, the following benefits shall not be taken into account:
 - a. Any ancillary benefit which is not directly related to retirement income benefits;
 - b. Any other benefit not required under section 415(b)(2) of the [Internal Revenue] Code and Treasury regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the [Internal Revenue] Code.
- (2) *Participation in other defined benefit plans.* The limitation of this subsection with respect to any participant who at any time has been a participant in any other defined benefit plan (as defined in section 414(j) of the [Internal Revenue] Code) maintained by the city shall apply as if the total benefits payable under all defined benefit plans in which the participant has been a participant where payable from one plan.
- (3) *Adjustments in limitations.*
 - a. In the event the participant's retirement benefits become payable before age sixty-two (62), the maximum amount of annual retirement income limitation prescribed by this article shall be reduced in accordance with regulations issued by the Secretary of the Treasury

pursuant to the provisions of section 415(b) of the [Internal Revenue] limitation (as reduced) equals an annual benefit (beginning when such retirement income begins) which is equivalent to the [Internal Revenue] Code section 415(b) maximum amount of annual retirement income beginning at age sixty-two (62). This limitation shall not apply to qualified police or firefighters as that term is defined in [Internal Revenue] Code section 415(b)(2)(G).

- b. In the event the participant's benefit is based on at least fifteen (15) years of credited service, the adjustments provided for in subparagraph a. above shall not apply.
- c. The reductions provided for in subparagraph a. above shall not be applicable to disability benefits or preretirement death benefits.
- d. In the event the participant's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the basic limitation set forth in paragraph (1) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made using an assumed interest rate of five (5) per cent and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.
- e. *Less than ten (10) years of service.* The maximum retirement benefits payable under this article to any participant who has completed less than ten (10) years of credited service with the city shall be the amount determined under paragraph (1) multiplied by a fraction, the numerator of which is the number of the participant's years of credited service and the denominator of which is ten (10). The reduction provided for in this subparagraph shall not be applicable to disability benefits of preretirement death benefits.
- f. *Ten thousand dollar (\$10,000.00) limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a participant shall be deemed not to exceed the limitations in this subsection if the benefits payable with respect to such participant under this plan and under all other qualified defined benefit pension plans to which the city contributes, do not exceed ten thousand dollars (\$10,000.00) for the

applicable plan year and for any prior plan year and the city has not at any time maintained a qualified defined contributions plan in which the participant participated.

- g. *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the participant's benefit under any defined benefit plans in which participant participated, such reduction to be made first with respect to the plan in which participant most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the participant participated, such reduction to be made first with respect to the plan in which the participant most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such participant.
- h. *Cost-of-living adjustments.* The limitations as stated herein shall be adjusted annually in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to section 415(d) of the [Internal Revenue] Code.
- i. For any person who first becomes a participant in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code section 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of two hundred thousand dollars (\$200,000.00) shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code section 401(a)(17)(B). For any person who first became a participant prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under

the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code section 401(a)(17)(1991).

- j. This section shall be effective for distributions after December 31, 2001.
- k. For purposes of applying the limitations of [Internal Revenue] Code section 415(b), compensation includes base pay, incentive pay, longevity pay, shift premiums, police incentive pay, overtime pay, base salary or wages while absent from work on account of vacation, holiday, illness or other authorized paid leave, payments in consideration of unused sick and vacation time, and city contributions on behalf of the employee to a deferred compensation program maintained pursuant to section 457 of the [Internal Revenue] Code. Additionally, this limitation specifically includes the crediting of compensation while absent from service for military duty; such crediting shall not exceed the compensation that would have been credited under the system if system services had continued.

(Ord. No. L-34, § 1, 8-18-08; Ord. No. L-118, § 5, 5-3-10; Ord. No. L-212, § 2, 5-2-11)

Sec. 13-176. - Termination of plan and distribution of fund.

Upon termination of the plan by the city for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in [F.S.] chapter 121, or upon written notice to the board of trustees by the city that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be distributed in accordance with the following procedures:

- (a) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.
- (b)

The board of trustees shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan, as specified in subsection (c).

- (c) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (b) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.
- (d) If there is asset value remaining after the full distribution specified in subsection (c), and after payment of any expenses incurred with such distribution, such excess shall be returned to the municipality, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.
- (e) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (b), the amounts under subsection (c).

(Ord. No. L-111, § 4, 2-1-10)

Sec. 13-177 - Deferred retirement option plan (DROP).

(a) *Eligibility to participate in the DROP.*

- (1) Any member who is eligible to receive a normal retirement pension may participate in the DROP. Members shall elect to participate by applying to the board of trustees on a form provided for that purpose, including an

irrevocable letter of resignation from service to the city and withdrawal from the DROP effective after no more than sixty (60) months of participation in the DROP.

- (2) Election to participate shall be forfeited if not exercised within the first twenty-seven (27) years of combined credited service. However, participation in the first year of enactment will be extended to those members with twenty-eight (28) years of service in calendar year 2011.
 - (3) A member shall not participate in the DROP beyond the time of attaining thirty (30) years of service and the total years of participation in the DROP shall not exceed five (5) years. For example:
 - a. Members with twenty-five (25) years of credited service at time of entry shall only participate for five (5) years.
 - b. Members with twenty-six (26) years of credited service at time of entry shall only participate for four (4) years.
 - c. Members with twenty-seven (27) years of credited service at time of entry shall only participate for three (3) years.
 - (4) Upon a member's election to participate in the DROP, he or she shall cease to be a member and is precluded from accruing any additional benefit under the pension fund. For all fund purposes, the member becomes a retirant. The amount of credited service and final average salary freeze as of the date of entry into the DROP.
- (b) *Limitations on participation.*
- (1) DROP election shall be irrevocable following deposit of the first payment into the member's account.
 - (2) A member may participate in the DROP only once. After DROP participation commences, a member may not rejoin the retirement system as an active member nor shall the member be eligible to receive disability or preretirement death benefits from the system.
 - (3) A member shall continue to receive all other benefits guaranteed active members under any collective bargaining agreement or applicable city policy, unless otherwise addressed in this plan.
 - (4)

Members who are also participating in the DROP in Fort Pierce Retirement and Benefits Plan must cease participation in both DROP programs at the same time. If the entry date into both was not the same date, then the termination date of participation in both DROP plans will be the earlier termination date.

- (5) If a police officer fails to terminate employment at the end of participation in the DROP, interest credits shall cease on the current balance and there shall be no future DROP deposits and those amounts will be forfeited.

(c) *Amounts payable upon election to participate in DROP.*

- (1) Monthly retirement benefits would have been payable had the member terminated employment with the department and elected to receive monthly pension payments will be paid into the DROP and credited to the retiree. Payments into the DROP will be made monthly over the period the retiree participates in the DROP, up to a maximum of sixty (60) months.
 - a. Members who are entitled to a lump-sum payment under section 13-168 of the pension plan may enter into the DROP. However, the member's benefit will be paid as a monthly annuity, during the period of the DROP and for the member's lifetime thereafter (with ten (10) years of payments guaranteed). The member will be entitled to the lump sum of the DROP balance at the end of the DROP term, but no other lump sum will be payable.
- (2) Payments to the DROP will be invested in a member directed account. The board shall select a third-party administrator or provider for this purpose. The member's DROP account will be required to pay the expenses of investment and the DROP participant shall be responsible for the investment risks.
- (3) No payments will be made from DROP until the member terminates employment with the city. Upon termination from DROP and from employment a member's monthly pension benefit will be paid directly to the member.

(d) *Amounts payable upon termination of employment.*

- (1) Upon termination of employment, participants in the DROP shall receive the balance of the DROP account in accordance with the following rules:
 - a. Members must elect to begin to receive payment from the DROP upon

termination of employment.

- b. Payments shall be made in a lump sum and the entire account balance will be paid to the retirant upon approval of the board of trustees. The account balance may be rolled over via a trust to trustee transfer as provided for in section 13-174 of this plan.
 - c. Any form of payment selected by a police officer must comply with the minimum distribution requirement of the IRC 401(A)(9) e.g. payments must commence by age seventy and one-half (70½) or retirement, whichever is later.
 - d. The beneficiary of the DROP participant who dies before payments from DROP begin shall have the same rights as the participant in accordance with this section.
- (2) Members may elect a beneficiary to receive the DROP balance upon the member's death.
- (3) Benefit amounts not guaranteed. All benefits payable under this DROP program shall be paid solely from DROP assets. Neither the city nor the board of trustees shall have any duty to pay the member, except as set forth in this program. No rate of return on DROP assets is guaranteed and by their participation, members consent to the terms of this program and discharge the city and board of trustees from any and all liability, except as set forth in this program.
- (4) There shall be no material fiscal impact or effect on the city as a result of this section.

(Ord. No. L-212, § 3, 5-2-11)